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FIRST GENERAL COUNSEL'S REPORT

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SOURCE:

RESPONDENTS:

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AND REGULATION:

RELEVANT STATUTE

INTERNAL REPORTS CHECKED:

FEDERAL AGENCIES CHECKED:

December 2, 2015 (latest)

October 13, 2015 (earliest)/

RAD REFERRAL: 11L-33

EXPIRATION OF SOL:

INTERNALLY GENERATED

Heath Shuler for Congress and Troy Burns,

DATE ACTIVATED: February 9, 2012

in his official capacity as treasurer

11 C.F.R. § 104.3 Disclosure Reports

2 U.S.C. § 434(b)

Reports Analysis Division Referral Materials

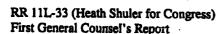
None

INTRODUCTION I.

Heath Shuler for Congress is the principal campaign committee for Heath Shuler, who was a candidate for North Carolina's 11th Congressional District in the 2010 general election. The Reports Analysis Division ("RAD") referred Heath Shuler for Congress and Troy Burns, in his official capacity as treasurer ("the Committee"), to the Office of General Counsel ("OGC") for failing to disclose a total of \$1,003,696.58 in disbursements on its 2010 October Quarterly, 12-Day Pre-General, and 30-Day Post-General Reports. In response to the RAD Referral, the Committee stated that the reporting omissions were the result of an accounting error caused by its

vendor's failure to check one of the Committee's bank accounts for disbursement information.

Rep. Shuler is not seeking reelection in 2012. See Congressman Heath Shuler's Website, http://shuler.house.gov/2012/02/rep-shuler-statement-on-retirement.shtml (Feb. 2, 2012, 4:34 PM).



Based on the available information, we recommend that the Commission open a Matter
Under Review and find reason to believe that the Committee violated 2 U.S.C. § 434(b) by

3 failing to disclose all disbursements in its disclosure reports. We also recommend that the

Commission enter into pre-probable cause conciliation with the Committee

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

On January 31, 2011, the Committee amended three of its reports to the Commission to disclose additional disbursements totaling \$1,003,696.58. Specifically, the Committee amended its 2010 October Quarterly Report to disclose additional disbursements of \$228,085; its 2010 12-Day Pre-General Report to disclose additional disbursements of \$371,053; and its 2010 30-Day Post-General Report to disclose additional disbursements of \$404,558.58. These amendments reflected a notable increase in disbursement activity on each report, 35%, 94%, and 57%, respectively. Most of the increase resulted from the omission of three large disbursements to "Buying Time, LLC" for media buys (\$228,060 on September 27; \$371,028 on October 7; and \$400,493 on October 10, 2010). The remainder of the originally undisclosed disbursements was for stipend payments of approximately \$627 to three individuals, and a nominal amount of uniternized disbursements.

The Committee filed a Miscellaneous Text Submission (Form 99) with its amendments.

The Form 99 explained that the disbursements were omitted from the Committee's original reports because of a vendor's accounting error, and stated that the "Committee is working with the vendor to correct its processes to prevent such errors in the future."

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RR 11L-33 (Heath Shuler for Congress)

RAD sent the Committee Requests for Additional Information ("RFAIs") requesting clarification regarding the increase in disbursements disclosed on each of the amended reports. The Committee submitted virtually identical responses to each of these RFAIs, again attributing the omissions to a vendor's "accounting error" because the vendor "omitted the activity from one of the Committee's bank accounts." The Committee further explained in the responses, as it did on the January 31, 2011 Form 99, that the relevant amendments corrected the errors by disclosing the omitted activity and that the Committee was working with the vendor to prevent similar errors in the future. On December 7, 2011, this Office notified the Respondent of the Referral in accordance with the Commission's policy regarding notification in non-complaint generated matters. See 74 Fed. Reg. 38617 (August 4, 2009). In the response to the notification, the Committee reiterated its previous explanations and provided more detail about the circumstances of the reporting errors. See Letter from Brian G. Svoboda, Perkins Coie to Jeff S. Jordan, Office of the General Counsel (Feb. 2, 2012) (hereinafter "Response"). The Committee explained that its compliance vendor, "Campaign Finance Officers LLC" ("CFO"), was tasked with reviewing the Committee's bank accounts, inputting disbursement information from those accounts into filing software, end preparing the Committee's FEC disclosure reports. Id. at 1. And CFO failed to review the bank account that the Committee used for media purchases prior to filing the reports in question and, as a result, it failed to disclose disbursements for five media transactions. Id. at 1-2. The Committee states that it self-reported the omissions to the Commission through its amendments on January 31, 2011, immediately upon learning of CFO's errors while preparing its 2010 Year-End Report. Id. Further, in order to prevent future errors, it has implemented a new

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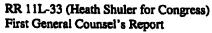
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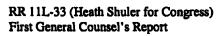


4 1 policy requiring that both the Committee and CFO review the Committee's FEC reports twice 2 before filing. According to the Committee, CFO also fired the employee who committed the 3 errors. Finally, the Committee contends that "enforcement action . . . would be inappropriate here," because it hired an outside vendor to assist with its reporting requirements, the omissions 4 5 involved only a small number of transactions and it took prompt corrective action. Id. 6 B. Analysis 7 The Federal Election Campaign Act of 1971, as amended ("the Act"), requires committee 8 treasurers to file reports of receipts and disbursements in accordance with the provisions of 9 2 U.S.C. § 434. See 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.1(a). These reports must include, 10 inter alia, the total amount of receipts and disbursements. See 2 U.S.C. § 434(b); 11 C.F.R. § 104.3. Committees are also required to disclose itemized breakdowns of disbursements and 11 disclose the name and address of each person who has received any disbursement in an aggregate 12 amount or value in excess of \$200 within the calendar year, together with the date and amount of 13 any such disbursement. See 2 U.S.C. § 434(b)(4),(5) and (6); 11 C.F.R. § 104.3(b)(2) and (4). 14

The Committee did not comply with the Act's reporting requirements when it failed to disclose \$1,003,696.58 in disbursements, consisting primarily of payments for media purchases, on its original reports filed with the Commission. The Committee failed to discbse \$228,085 in disbursements on its original 2010 October Quarterly Report, \$371,053 in disbursements on its original 2010 12-Day Pre-General Report, and \$404,558.58 in disbursements on its 2010 30-Day Post-General Report. Therefore, we recommend that the Commission find reason to believe that the Committee violated 2 U.S.C. § 434(b).

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RECOMMENDATIONS IV.

1	IV.	RECO	<u>OMMENDATIONS</u>		
2		1.	Open a MUR.		
4 5		2.	Find reason to believe that H official capacity as treasurer.	leath Shuler for Congress and Troy Burns, in his, violated 2 U.S.C. § 434(b).	
6 7		3.	Approve the attached Factual and Legal Analysis.		
8 9 10		4.	Enter into conciliation with Heath Shuler for Congress and Troy Burns, in his official capacity as treasurer, prior to a finding of probable cause to believe.		
11 12		5.	official capacity as treasurer	, prior to a finding of probable cause to believe.	
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14 15		6.	Approve the appropriate lett	er.	
16 17				Anthony Herman General Counsel	
18 19 20				•	
21 22		4-9-	12 BY:	Ketl Gutl	
23	Date	<u></u>		Kathleen Guith	
24 25				Deputy Associate General Counsel for Enforcement	
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28 29				K.T. P	
30				Peter G. Blumberg	
31				Assistant General Counsel	
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30 37				Ana J. Peña-Wallace	

Ana J. Peña-Wallace

Attorney